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DUTY OF MENTAL HEALTH PROFESSIONALS TO WARN OF POTENTIALLY VIOLENT CONDUCT BY PATIENTS

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You asked us to update OLR report [2010-R-0024](#) on the duty of mental health professionals to warn of potentially violent conduct by patients. This report also addresses a related common law concept, the duty to control, as it applies in such cases.

SUMMARY

Connecticut statutes allow, but do not require, psychologists, psychiatrists, marital and family therapists, social workers, and licensed professional counselors to disclose information that would otherwise be confidential between the patient and therapist when they believe a serious risk of imminent personal injury to the patient or third parties exists. The statutes applying to the different mental health professionals are worded slightly differently. They all authorize disclosure, but they do not require it, nor do they place an affirmative duty on the mental health professional to warn either potential victims or law enforcement agencies. The statutes do not specify to whom the information may be disclosed. The statutes have not been amended since we issued our 2010 report and we have found no relevant case law on the duty to warn in Connecticut since then.

Mental health professionals may be held civilly liable under the common law, however, if they fail to warn an identifiable victim of an imminent physical threat. The common law duty to warn was initially articulated in a 1976 California Supreme Court case, *Tarasoff v. Regents* (17 Cal. 3d 425). *Tarasoff* held that therapists have an obligation to warn potential victims when they become aware of serious danger posed by their patients. While Connecticut's Supreme Court has declined to find a violation of the duty to warn in the factual situations presented to it to date, Connecticut courts have held that such a duty exists. A duty to control also exists under certain circumstances.

In January 2013, the National Conference of State Legislatures compiled duty to warn laws in all 50 states, which is available at <http://www.ncsl.org/issues-research/health/mental-health-professionals-duty-to-warn.aspx>.

CONNECTICUT STATUTES

Communications between mental health professionals and patients are generally confidential and cannot be disclosed to a third party without the patient's consent. The definition of “communications” varies somewhat by profession. For example, it is broader for psychiatrists and social workers than for psychologists.

Mental health professionals may disclose privileged communications without the patient's consent in certain circumstances specified by the following statutes:

1. Psychologists: when they believe “in good faith that there is risk of imminent personal injury to the person or to other individuals or risk of imminent injury to the property of other individuals” [\(CGS § 52-146c\(c\)\(3\)\)](#).
2. Psychiatrists: when they determine “that there is substantial risk of imminent physical injury by the patient to himself or others” [\(CGS § 52-146f\(2\)\)](#).
3. Marital or family therapists: when they believe “in good faith that the failure to disclose such communications presents a clear and present danger to the health and safety of any individual” [\(CGS § 52-146p\(c\)\(2\)\)](#).
4. Social workers: when they determine “that there is a substantial risk of imminent physical injury by the person to himself or others” [\(CGS § 52-146q\(c\)\(2\)\)](#).

5. Licensed professional counselors: when they believe “in good faith that the failure to disclose such communication presents a clear and present danger to the health or safety of any individual” [\(CGS § 52-146s\(c\)\(4\)\)](#) or believe “in good faith that there is risk of imminent personal injury to the person or to other individuals or risk of imminent injury to the property of other individuals” [\(CGS § 52-146s\(c\)\(5\)\)](#).

[CGS § 52-146o](#) generally bars disclosure by a physician of any information he or she has regarding a patient's actual or supposed mental disease or disorder or related records. For physicians who are not psychiatrists, it appears that there is no exception for risks of imminent injury. However, physicians can disclose known or suspected abuse of children, the elderly, and people with disabilities. More generally, the law requires a wide variety of persons, including mental health professionals, to report actual or suspected abuse [\(see OLR report 2012-R-0437\)](#).

[CGS § 52-146n](#) makes communication between counselors in the Judicial Department's employee assistance program and department employees confidential. It bars a counselor from disclosing any confidential communications without the employee's consent (1) to any third person, other than a person to whom disclosure is reasonably necessary for the purposes for which the counselor is consulted; (2) in any civil or criminal case or proceeding; or (3) in any legislative or administrative proceeding. It does not appear that there is an exception for cases involving a risk of imminent harm, unless the counselor is a member of one of the professions listed above.

COMMON LAW DUTY TO WARN OR CONTROL

The common law duty to warn in the context covered by this report was initially articulated in a 1976 California Supreme Court case, *Tarasoff v. Regents* (17 Cal. 3d 425). The case arose after a man named Poddar told his psychologist of his intention to kill an unnamed but readily identifiable woman, Tatiana Tarasoff. The psychologist wished to have Poddar committed, but his supervisor disagreed. No one warned Tatiana or her parents of her peril, and Poddar murdered her. The court held that when:

a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of

the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances (*Tarasoff* p. 431).

The Connecticut Supreme Court has found that a duty to warn exists but we did not find any court opinion in this state. In *Kaminski v. Fairfield* (216 Conn. 29, 37 1990)) the Supreme Court said that *Tarasoff* “is distinguishable [from this case] both because the plaintiffs did not have a professional relationship with [the perpetrator]...and because the defendant was not a specifically identifiable victim.”

A subsequent Connecticut case, *Fraser v. United States* (30 F.3d 18 (1994)) addresses the duty to warn and the duty to control. The common law Restatement (Second) of Torts § 319 provides: “One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.”

In *Fraser*, a mentally ill outpatient at the West Haven Veteran's Administration Medical Center, John Doe, stabbed his employer, Hector Fraser, 37 times. Fraser died the next day from the resulting wounds. Agnes Fraser, as executrix of the estate, sued the federal government under the federal Tort Claims Act, alleging that the negligence of the center's employees led to the stabbing. Among other things, she alleged that the medical center failed to (1) warn others of Doe's violent propensity and (2) take reasonably necessary actions to control Doe in order to protect others.

The district court, applying Connecticut law, which both parties agreed governed the substantive issues of liability in such suits, granted the defendant's motion for summary judgment. It held that, as a matter of law, the medical center owed no duty to control Doe or to warn Fraser about Doe.

Agnes Fraser appealed the decision. The court of appeals sustained the district court's decision with regard to the issue of the duty to warn. But it was unclear on the issue of the duty to control and certified two questions to the Connecticut Supreme Court: (1) does Connecticut recognize a general duty on the part of a psychotherapist to control a patient being treated on an outpatient basis in order to prevent harm to third persons and (2) if so, do the allegations of the complaint in this case present a triable jury issue?

The Supreme Court chose to narrowly decide the question, concluding that there was no such duty in this particular case as the outpatient was not known to be dangerous and the victim was neither readily identifiable nor within a foreseeable class of victims (*Fraser v. United States*, 236 Conn. 625 (1996)).

Later Connecticut cases have interpreted *Fraser* as acknowledging a duty to warn or control under particular factual circumstances. In a case interpreting *Fraser*, the federal District Court for the District of Connecticut held that a “psychiatrist has a duty to speak where harm to identifiable victims is a foreseeable consequence of his silence” (*Garamella v. New York Medical College*, 23 F. Supp. 2d 167, 175 (D. Conn. 1998)). In *Garamella*, the court allowed the case to continue so a jury could decide whether the psychiatrist had a duty to warn others based on his patient's statements. The patient, himself a student training to be a psychiatrist, revealed that he was a pedophile who intended to work with children. The psychiatrist did not warn the patient's supervisors at the hospital at which he was training, and the patient sexually assaulted a young boy. The court held that psychiatrists do have a duty to warn under some circumstances, and that a jury must decide whether the necessary conditions had been met.

Similarly, in *Jacoby v. Brinkerhoff* (250 Conn. 86, 96 (1999)), the Connecticut Supreme Court held that under *Fraser* a psychotherapist has the duty to warn of possible violence by a patient only if there is “an imminent risk of serious personal injury to identifiable victims.” The court stressed that the threat must be of physical violence, not damage to property or to the plaintiff's marriage.

In at least two instances, Connecticut Superior Courts have allowed cases to go forward so juries could decide whether the factual standards outlined in *Fraser* had been met (e.g. *Roesler v. Reich*, Superior Court, Judicial District of New London, at Norwich, No. 128514, May 5, 2006, 2006 Conn. Super. LEXIS 1316; *Schlegel v. New Milford Hosp.*, Superior Court, Judicial District of Waterbury, at Waterbury, No. X02CV 960071253S, May 9, 2000, 2000 Conn. Super. LEXIS 1196).

In *Schlegel*, the court found a possible duty to control when an outpatient killed his mother less than a day after being discharged from a hospital emergency room. The patient had a long history of violence and substance abuse, had behaved bizarrely toward his mother, and was actively psychotic in the emergency room. He was given one dose of chlorpromazine and discharged to his mother's care without any further evaluation and without a treatment plan. In the 24 hours before killing his mother, he had attacked and fought with friends of his.

In this case, the court stated:

The upshot of *Fraser* is that in Connecticut, a psychotherapist does assume a duty to control his psychiatric outpatient to prevent injury to third person *if* he knows or has reason to know that his patient will cause harm to that particular person. To establish that a psychotherapist knew or had reason that his patient would harm a particular patient, the person must prove that he was either a specifically identifiable victim of the patient, or at least a member of a class of the identifiable victims or within the zone of risk to an identifiable victim of the patient (*Schegel* at 7, emphasis in the original).

The court denied the defendants' motion for summary judgment. It held that the record, when construed in the light most favorable to the plaintiffs (required for summary judgments), clearly suggests facts that if proved at trial would establish a duty on the part of the defendants to control Schlegel. We have found no subsequent litigation on this case.

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